

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
WESTERN DIVISION**

Benito Sanchez)	
)	
Plaintiff,)	
)	No.:
V.)	
)	Judge:
Union Pacific Railroad Company)	
)	Trial by Jury Demanded
Defendant.)	

COMPLAINT AT LAW

Now comes the Plaintiff, Benito Sanchez, by and through his attorneys, James T. Foley and Hoey & Farina, P.C., and for his Complaint against Defendant, Union Pacific Railroad Company, (hereinafter UP) states as follows:

1. Jurisdiction of this Court is invoked under the provisions of Title 45 US Code § 56, Title 28 U.S. Code § 51, et seq.
2. This action arises under and the rights and liabilities of the parties to this cause are governed by the Federal Employers' Liability Act, 45. U.S.C. § 51, et seq.
3. On November 14, 2005, at or about 11:30 a.m. and at all pertinent times, Defendant Union Pacific (UP) was a railroad company doing business in the State of Iowa and the State of Nebraska.
4. On November 14, 2005, at or about 11:30 a.m. and at all times pertinent Plaintiff, Benito Sanchez was and is a resident of Council Bluffs, Iowa, county of Pottawattamie.
5. On November 14, 2005, at or about 11:30 a.m. and at all times pertinent, Defendant UP owned and operated a Railroad in Interstate Commerce.

6. On November 14, 2005, at or about 11:30 a.m. and at all times pertinent, Plaintiff was employed by Defendant UP as a Maintenance of Way laborer.

7. On November 14, 2005 at or about 11:30 a.m. and at all times pertinent, Defendant UP owned, managed, maintained and/or used as a portion of its railroad system an area of mainline track at Milepost 20 in or around Elkhorn, Nebraska, at the Omaha Subdivision.

8. On November 14, 2005 at or about 11:30 a.m. and at all times pertinent, Plaintiff, Benito Sanchez was performing work for Defendant UP as a member of gang number 4682 in connection with or in furtherance of Defendant's business of Interstate Commerce and Transportation.

9. In the course of his duties as a Maintenance of Way laborer with the UP gang number 4682 on November 14, 2005 at or about 11:30 a.m., at or near Milepost 20, in or around Elkhorn Nebraska, Plaintiff was attempting to replace a 20 foot section of defective rail on the mainline of Defendant UP's railroad.

10. On November 14, 2005 at or about 11:30 a.m., at or near Milepost 20, in or around Elkhorn, Nebraska, while in the process of attempting to replace a 20 foot section of defective rail, one of Plaintiff's co-workers from gang number 4682 attempted to pick up the replacement section of rail with a grappling bucket, which while in the process of picking up the 20 foot section of rail, unexpectedly, unannounced, and out of the control of the operation of the grappling bucket, violently swung the 20 foot section of rail into and on top of Plaintiff's right foot, leg and body.

11. It was the continuing duty of the Defendant UP as Plaintiff's employer, at the time and place in question to use ordinary care under the circumstances in furnishing Plaintiff with reasonably safe equipment; and to keep such place of work in a reasonably safe condition.

12. In violation of its duty, UP negligently and carelessly failed to provide Plaintiff with a safe place to work by committing one or more of the following negligent acts or omissions:

- a) Carelessly and negligently permitted a defective grappler truck, UP number 957527 to be used by its employees, when it had actual and constructive notice that said track was defective.
- b) Failed to properly inspect the grappler truck, UP number 957527 used by its employees.
- c) Failed to properly inspect, maintain repair and monitor the equipment used by its employees, including UP truck number 957527, so the same became hazardous to its employees;
- d) Failed to ensure that the system and components, including the hydraulic operations of UP truck number 957527 which UP employees were required to use, were free of conditions that endangered the safety of its crew, including the Plaintiff, in violation of the Code of Federal Regulation;
- e) Failed to warn the Plaintiff of a defective and dangerous condition, when timely warning would have averted injury to the Plaintiff;
- f) Carelessly and negligently used on its line, and in its operation, a grappling truck, UP number 957527, which had not been properly inspected, was not in proper condition and was not safe to operate without unnecessary danger of personal injury to Plaintiff;
- g) Failed to provide Plaintiff and UP gang number 4682 with the proper equipment to perform the function of its job, including a boom truck with a boom crane of sufficient capacity to lift and position a 20 foot section of replacement rail;
- h) Failed to provide Plaintiff and UP gang number 4682 with sufficient manpower to perform the duties required to safely replace a 20 foot section of rail;
- i) Otherwise failed to exercise ordinary care to provide Plaintiff with a safe place work;

13. Defendant's failure to provide Plaintiff, Benito Sanchez, with a safe place to work and with a safe and efficient equipment, tools, and manpower, by one or more of the aforementioned negligent acts or omissions caused, in whole or in part, Plaintiff's injuries.

14. As a consequence Plaintiff, Benito Sanchez incurred injuries which have caused and/or will continue to cause him great pain, suffering, inconvenience, anguish and disability; as a further result, Plaintiff Benito Sanchez has and will in the future be kept from attending to his ordinary affairs and duties, and has lost and will lose great gains which he otherwise would have made and acquired, as a further result Plaintiff Benito Sanchez has incurred medical, hospital and related expenses and is reasonably certain to incur further medical, hospital and related expenses in the future.

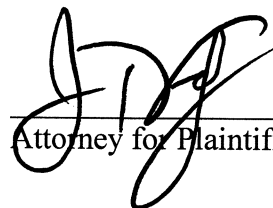
15. Plaintiff Benito Sanchez demand trial by jury.

WHEREFORE, the Plaintiff, Benito Sanchez, demand judgment in his favor and against Defendant Union Pacific Railroad Company in a sum in excess of \$100,000.00 plus the costs of this suit.

Respectfully submitted,

Benito Sanchez

By:



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